(16)

No. 06-694

JUN 11 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

MICHAEL WILLIAMS, RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: NOV. 17, 2006
CERTIORARI GRANTED: MAR. 26, 2007

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Docket No. 04-15128-JJ

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

MICHAEL WILLIAMS, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
	* * * * *
01/26/2005	Record Received in Miami Office from USDC
	* * * * *
02/7/2005	E-Brief Tendered: Appellant by Richard J. Diaz for Michael Williams
02/11/2005	E-Brief Tendered: Corrected Appellant Brief by Richard J. Diaz for Michael Williams
	* * * * *
03/1/2005	Motion to Supplement the Record and Stay Briefing Schedule: (Atty: Suzan H. Ponzoli)
	* * * * *

DATE	PROCEEDINGS
03/04/2005	Appellant Brief Filed: (Atty: Richard J. Diaz)
03/04/2005	Record Excerpts: (Atty: Richard J. Diaz)
03/08/2005	Appellee's Motion to Supplement the Record is GRANTED. The Court reporter shall ..file the transcript ..no later than 03/25/05 and Appellee shall deliver a copy of the Order to the court reporter. Appellee's brief is due 14 days after the transcript is filed in District Court. (FMH)
	* * * * *
04/05/2005	Corrected Appellee's Motion to Supplement the record is granted. The Court reporter shall ..file the transcript ..no later than 04/18/05 and Appellee shall deliver a copy of the Order to the court reporter. Appellee's brief is due ..May 2, 2005. (FMH) see ff
	* * * * *
04/18/2005	Record Received in Miami Office from USDC (1st supp)
	* * * * *
05/02/2005	Appellee Brief Filed: (Atty: Suzan H. Ponzoli)

DATE	PROCEEDINGS
05/02/2005	E-Brief Tendered: Appellee by Suzan H. Ponzoli for United States of America
	* * * * *
05/09/2005	Record on Appeal
	* * * * *
05/09/2005	1st Supplemental Record On Appeal: (Atty: Richard J. Diaz)
	* * * * *
02/01/2006	Oral Argument Scheduled: 02/01/06
	* * * * *
04/06/2006	Judgment Entered
	* * * * *
04/06/2006	Opinion Issued AFFIRMED/REVERSED/VACATED.
	* * * * *
05/30/2006	Petition for Rehearing En Banc: (Atty: Suzan H. Ponzoli)
07/17/2006	The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, the Petition(s) for Rehearing En Banc are DENIED.

DATE	PROCEEDINGS
	* * * * *
07/25/2006	CASE CLOSED—Mandate Issued
07/25/2006	Mandate Issued
	* * * * *
08/10/2006	Record and Exhibits Returned to District Court: 2vroa, 1 vsroa, 1psi
	* * * * *
03/28/2007	Certiorari Granted #06-694: (Atty: Suzan H. Ponzoli)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Docket No. 1:04-cr-20299-DMM-ALL

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL WILLIAMS, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
04/30/2004	1	COMPLAINT as to Michael Williams [1:04-m -2511] (nf, Deputy Clerk) (Entered: 05/03/2004)
04/30/2004	2	ARREST of Michael Williams [1:04-m -2511] (pv, Deputy Clerk) (Entered: 05/03/2004)
		* * * * *
05/13/2004	7	INDICTMENT as to Michael Williams (1) count(s) 1-2 (Criminal Category 1) Magistrate Judge Ted E. Band-

DATE	DOCKET NUMBER	PROCEEDINGS
		stra (Preliminary Examination cancelled.) (mg, Deputy Clerk) (Entered: 10/07/2004)
		* * * * *
07/14/2004	37	MOTION by Michael Williams to dismiss Count I (Former Deputy Clerk) (Entered: 07/15/2004)
		* * * * *
07/16/2004	42	RESPONSE by USA as to Michael Williams re [37-1] motion to dismiss Count I (gz, Deputy Clerk) (Entered: 07/19/2004)
07/19/2004	43	Minutes of change plea held on 7/19/04 before Judge Adalberto Jordan as to Michael Williams; GUILTY: Michael Williams (1) count(s) 1-2 Court Reporter Name or Tape #: F. Salopek (Former Deputy Clerk) (Entered: 07/20/2004)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
07/19/2004	44	Plea Agreement as to Michael Williams (Former Deputy Clerk) (Entered: 07/20/2004)
	* * * * *	
08/20/2004	49	ORDER DENYING DEFENDANT'S MOTION TO DISMISS COUNT I OF INDICTMENT: ORDER as to Michael Williams denying [37-1] motion to dismiss Count I as to Michael Williams (1) (Signed by Donald M. Middlebrooks on 8/20/04) [EOD Date: 8/23/04] (Former Deputy Clerk) (Entered: 08/23/2004)
	* * * * *	
09/21/2004	52	OBJECTION by Michael Williams to Presentence Investigation Report as to Michael Williams (gz, Deputy Clerk) (Entered: 09/22/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
09/24/2004	55	Minutes of sentencing held on 9/22/04 before Judge Donald M. Middlebrooks as to Michael Williams; Court Reporter Name: Roger Watford (kw, Deputy Clerk) (Entered: 09/29/2004)
		* * * * *
09/24/2004	56	JUDGMENT as to Michael Williams (1) count(s) 1-2 imprisonment 60 months to be served concurrently; supervised release 2 years (Signed by Judge Donald M. Middlebrooks on 9/24/04) [EOD Date: 9/29/04] CCAP (kw, Deputy Clerk) (Entered: 09/29/2004)
10/01/2004	57	NOTICE OF APPEAL by Michael Williams re: [56-1] judgment order EOD Date: 9/29/04; Michael Williams (1) count(s) 1-2; Filing Fee: $ (FEE NOT PAID) Copies to

DATE	DOCKET NUMBER	PROCEEDINGS
		USCA, AUSA, USM, USPO and Counsel of Record. (pc, Deputy Clerk) (Entered: 10/04/2004)
		* * * * *
10/01/2004	58	MOTION by USA for a Preliminary Order of Forfeiture (Former Deputy Clerk) (Entered: 10/04/2004)
10/05/2004	59	PRELIMINARY ORDER OF FORFEITURE: ORDER as to Michael Williams granting [58-1] motion fora Preliminary Order of Forfeiture (Signed by Judge Donald Middlebrooks on 10/5/04) [EOD Date: 10/6/04] CCAP (Former Deputy Clerk) (Entered: 10/06/2004)
		* * * * *
12/07/2004	70	MOTION by USA as to Michael Williams for entry of final order of forfeiture (bs, Deputy Clerk) (Entered: 12/09/2004)

DATE	DOCKET NUMBER	PROCEEDINGS
12/16/2004	71	ORDER as to Michael Williams granting [70-1] motion for entry of final order of forfeiture as to Michael Williams (1) (Signed by Judge Donald M. Middlebrooks on 12/15/04) [EOD Date: 12/20/04] CCAP (kw, Deputy Clerk) (Entered: 12/20/2004)
12/28/2004	72	TRANSCRIPT filed as to Michael Williams of Sentencing Hearing held 9/22/04 @ 10:30am before Judge Donald L. Middlebrooks Pages: 1-23 re: [57-1] appeal. (nc, Deputy Clerk) (Entered: 12/28/2004)
		* * * * *
01/26/2005		Transmitted record on appeal to U.S. Court of Appeals as to Michael Williams: (Miami Office) Consisting of (1) Volume of Pleadings, (1) Volume of Transcripts and

DATE	DOCKET NUMBER	PROCEEDINGS
		(1) Sealed Envelope containing PSI Report [57-1] appeal (nc, Deputy Clerk) (Entered: 01/26/2005)
01/26/2005	76	Judgment Returned Executed as to Michael Williams on 1/11/05 at BOP FCI Miami, Florida (gz, Deputy Clerk) (Entered: 01/27/2005)
		* * * * *
04/11/2005	80	TRANSCRIPT filed as to Michael Williams of Plea Colloquy held 7/19/04 @ 9:12am before Judge Adalberto Jordan Pages: 1-40 re: [57-1] appeal. (nc, Deputy Clerk) (Entered: 04/13/2005)
04/14/2005	81	1st Supplemental transmitted to USCA as to Michael Williams re: [57-1] appeal by Michael Williams USCA # 04-15128-B (nc, Deputy Clerk) (Entered: 04/14/2005)

DATE	DOCKET NUMBER	PROCEEDINGS
04/14/2005		1st Supplemental Transmitted record on appeal to U.S. Court of Appeals as to Michael Williams: (Miami Office) Consisting of (1) Volume of Transcript[57-1] appeal (nc, Deputy Clerk) (Entered: 04/14/2005)
	* * * * *	
07/28/2006	85	MANDATE OF USCA (certified copy) as to Michael Williams RE: [57-1] appeal conviction reversed and sentence on count(s) 1 vacated , and affirming judgment/ order of the district court on count(s) 2 with court's opinion Date Issued: 7/25/06 Appeal #: 04-15128-JJ; Copy to Judge. (nc, Deputy Clerk) Modified on 08/03/2006 (Entered: 07/31/2006)

DATE	DOCKET NUMBER	PROCEEDINGS
08/15/2006	86	Record on appeal returned from U.S. Court of Appeals: (Miami/Records) Consisting of (1) Volume of Pleadings, (2) Volumes of Transcripts and (1) PSI Report [57-1] appeal by Michael Williams USCA #: 04-15128-JJ (nc, Deputy Clerk) (Entered: 08/16/2006)
	* * * * *	
04/17/2007	89	ORDER as to Michael Williams re 88 Response filed by USA, Government will advise this Court when the Supreme Court reaches a final determination as to the constitutionality of count 1. Signed by Judge Donald M. Middlebrooks on 4/17/2006. (ls) (Entered: 04/17/2007)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. [04-cr-20299CR-MIDDLEBROOKS]
18 U.S.C. § 2252A(a)(3)(B)
18 U.S.C. § 2252A(a)(5)(B)
18 U.S.C. § 2253(a)

UNITED STATES OF AMERICA

vs.

MICHAEL WILLIAMS

[Filed: May 13, 2004]

INDICTMENT

The Grand Jury charges that:

COUNT 1

On or about April 26, 2004, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendant,

MICHAEL WILLIAMS,

did knowingly advertise, promote, and present material, in interstate commerce, by computer, in a manner that reflected the belief and that was intended to cause another to believe that the material contained an obscene visual depiction of a minor engaging in sexually explicit conduct and a visual depiction of an actual minor

engaging in sexually explicit conduct, that is, photographs with the following names:

1) !+!+ycs.jpg
2) -++++++++++++++++++++++++++++ 11yo+asian.jpg
3) 01- - - 5.jpg
4) 01- - - 6.jpg
5) 1.jpg
6) Pedofilia_fodendo16+(1).jpg
7) preteen+lolita+incest+ddogprn%60kdad.jpg

All in violation of Title 18, United States Code, Section 2252A(a)(3)(B) and (b)(1).

COUNT 2

On or about April 30, 2004, in Monroe County, in the Southern District of Florida, the defendant,

MICHAEL WILLIAMS,

did knowingly possess computer disks that contained images of child pornography, as defined in Title 18, United States Code, Section 2256(8)(A) and (B), that had been transported in interstate and foreign commerce by computer, that is, computer files with the following names:

1) !!!!!!!!Dad[1].jpg
2) Yung spred.jpg
3) cum shot.jpg
4) Babyshidaddy014.jpg
5) Babyshihelpless017.jpg

6) Babyshivid-sample4.jpg
7) Cindi+-bf+-4yo.jpg
8) dad+and+dau+5.jpg
9) brown11.jpg
10) action0276.jpg
11) 202572141g.jpg
12) Lilsuck.jpg
13) 4yroldsucker.jpg
14 win386.swp
15) photo by carl.jpg

All in violation of Title 18, United States Code, Section 2252A(a)(5)(B) and (b)(1).

FORFEITURE

a. The allegations of Counts 1 and 2 of this Indictment are realleged and by this reference fully incorporated herein for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 2253(a).

b. Upon conviction of any of the felony violations alleged in Counts 1 and 2 of this Indictment, the United States is entitled to forfeiture of and the defendant, **MICHAEL WILLIAMS**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 2253(a), any matter which contains any visual depiction of a minor engaged in sexually explicit conduct which was transported, shipped or received in violation 18 U.S.C. § 2251 *et. seq.*; any property, real or personal, used or intended to be used to commit, or to promote the

commission of, the violations alleged in Counts 1 and 2 of this Indictment; and any property, real or personal, constituting or traceable to gross profits or other proceeds which the defendant obtained from the violation(s) alleged in Counts 1 and 2 of this Indictment. Such forfeitures shall include, but are not limited to, two computers, and accompanying storage media, including hard drives CDs, seized at the defendant's residence at 34 Avenue A, Key Largo, Florida on April 30, 2004.

c. Pursuant to Title 18, United States Code, Section 2253(o), if any of the forfeitable property, or any portion thereof, as a result of any act or omission of the defendant:

(i) cannot be located upon exercise of due diligence;

(ii) has been transferred, or sold to, or deposited with a third party;

(iii) has been placed beyond the jurisdiction of the Court;

(iv) has been substantially diminished in value; or

(v) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States to seek the forfeiture of other property of the defendant up to the value of the above-described forfeitable property.

All pursuant to Title 18, United States Code, Section 2253.

A TRUE BILL

/s/ [ILLEGIBLE]
FOREPERSON

/s/ [ILLEGIBLE]
UNITED STATES ATTORNEY

/s/ GREGORY S. MUNSON
GREGORY S. MUNSON
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-cr-20299-CR-DMM

UNITED STATES OF AMERICA

vs.

MICHAEL WILLIAMS

[Filed: July 19, 2004]

PLEA AGREEMENT

The United States of America and Michael Williams (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to count one and two of the indictment, which counts charge the defendant with advertising, promoting, or presenting material reflecting the belief that the material contained an obscene visual depiction of a minor engaging in sexually explicit conduct or an actual minor engaging in sexually explicit conduct, in violation of Title 18, United States Code, Section 2252A(a)(3)(B), and possession of child pornography, in violation of Title 18, United States Code, Section 2252A(a)(5)(B).

* * * * *

8. The United States and the defendant agree that the defendant's right to appeal whether 18 U.S.C.

§2252A(a)(3)(B) is constitutionally overbroad under the First Amendment to the U.S. Constitution is preserved.

* * * * *

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

Date: [July 19, 2004]

By: /s/ GREGORY M. MUNSON
GREGORY M. MUNSON
ASSISTANT UNITED STATES ATTORNEY

Date: [July 19, 2004]

By: /s/ LUIS I. GUERRA
LUIS I. GUERRA
ATTORNEY FOR DEFENDANT

Date: [July 19, 2004]

By: /s/ MICHAEL WILLIAMS
MICHAEL WILLIAMS
DEFENDANT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 04-20299-CR-DMM

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL WILLIAMS, DEFENDANT

July 19, 2004
9:12 a.m.

TRANSCRIPT OF PLEA COLLOQUY HAD BEFORE THE HONORABLE ADALBERTO JORDAN, UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

GREGORY M. MUNSON
HAROLD E. SCHIMKAT
ASSISTANT U.S. ATTORNEYS
99 N.E. 4th Street
Miami, Florida 33132

FOR THE DEFENDANT:

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and
LUIS I. GUERRE, ESQ.
LUIS I. GUERRE, P.A.
3127 Ponce de Leon Blvd.
Miami, Florida 33134

* * * * *

[29]

* * * * *

THE COURT: All right. Mr. Williams, please listen carefully. I'm going to have Mr. Munson explain in proffer form what the government would be able to prove as to Counts I and II, and once he's done, I'm going to ask you whether you agree or disagree with the facts that he has related.

Mr. Munson.

MR. MUNSON: Thank you, your Honor.

Had this case proceeded to trial, the United States would have proven beyond a reasonable doubt that on April 26, 2004, Special Agent Tim Devine of the U.S. Secret Service logged into Yahoo—logged into a yahoo chat room "Pertensactionsuncensored1." Based on that chat occurring in the chat room and the title of the chat room, Special Agent Devine recognized the chat room as dedicated to child pornography. Special Agent Devine logged on using user name "Lisa_n_Miami," hereinafter "LNM."

After entering the chat room, Special Agent Devine saw a public message, that is, a message anyone in the chat room could see on their computer, from the user name "Twatjuicesucker2004," hereinafter "T4," stating that, "Dad of toddler has 'good' pics of her and me for

swap of your toddler pics or live cam." T4 and LNM engaged in private Internet chat in which they swapped non-pornographic [30] photographs. After sending and receiving photographs, T4 asked for additional pictures of LNM's daughter. When these pictures were not received, T4 accused LNM of being a cop. LNM responded by accusing T4 of being a cop.

After repeating these accusations in the public part of the chat room, T4 posted a message stating, "HERE ROOM; I CAN PUT UP LINK CUZ IM FOR REAL —SHE CANT," which was immediately followed by a computer hyperlink. The computer hyperlink contained, among other things, seven images of actual minors engaging in sexually explicit conduct. The hyperlink travelled in interstate or foreign commerce when it was posted.

On April 30, 2004, U.S. Secret Service agents executed a search warrant for 34 Avenue A, Key Largo, Florida. During the search, the defendant, Michael Williams, returned to 34 Avenue A, Key Largo, Florida. Agents recovered three hard drives from the residence, and recovered images from two hard drives as part of a forensic computer examination. The examination revealed, among other things, that the computer contained 15 pictures of actual minors engaged in sexually explicit conduct. The images had been downloaded over the internet and travelled in interstate commerce before being downloaded to the hard drive. The computer software on the computer was registered to Michael Williams, and the hard drives also contained images of the [31] defendant in the residence at 34 Avenue A, Key Largo, Florida.

In a post-Miranda statement, the defendant admitted being Twatjuicesucker2004, stated that he was the only person who used that account, and admitted that he lived alone at 34 Avenue A, in Key Largo and admitted using the computer to view adult and child pornography.

THE COURT: Okay. Mr. Munson, the seven images that were posted on the hyperlink are the seven images referenced in Count I?

MR. MUNSON: That's correct, your Honor. And as to Count II, the 15 images contained on the hard drive are the images that were charged in Count II of the indictment.

THE COURT: Okay. Again, this is not my case and I'm not familiar with it. These deal with actual depictions of actual minors, or they are—or it's virtual child pornography?

MR. MUNSON: These are actual minors, your Honor. That's the testimony our pediatrician would have presented at trial.

THE COURT: Okay. Thank you very much, Mr. Munson.

Mr. Williams, did you understand the facts set forth by Mr. Munson in his proffer?

THE DEFENDANT: Yes, sir, I did.

THE COURT: Do you agree or disagree with those [32] facts?

THE DEFENDANT: I agree with them.

THE COURT: How do you plead to the charges set forth in Counts I and II of the indictment, Mr. Williams,

reserving your right to appeal the denial of the motion to dismiss Count I? Guilty or not guilty.

THE DEFENDANT: Count I, guilty.

THE COURT: And Count II?

THE DEFENDANT: Count II, guilty.

THE COURT: All right. You understand, Mr. Williams, before I adjudicate you guilty, that whatever success you may have with regard to your guilty plea on Count I is not going to affect your adjudication of guilt on Count II. It may affect the sentencing issues, but it's not going to have any effect on your adjudication of guilt on Count II. Do you understand that?

THE DEFENDANT: Yes, sir, I do.

THE COURT: All right. It is the finding of this Court that Michael Williams is fully competent and capable of entering an informed plea, that Mr. Williams is aware of the nature of the charges and of the consequence of the plea, and that the guilty pleas are knowing and voluntary ones, supported by an independent basis in fact containing each of the essential elements of the two charged offenses. The guilty plea is, therefore, accepted, and Mr. Williams is now [33] adjudged guilty of the offenses charged in Counts I and II of the indictment.

* * * * *